IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10173 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHUKAR B YEVALAKAR

Versus

SUPER SAROJ SILK MILLS

Appearance:

1. Special Civil Application No. 10173 of 1993

MR KV GADHIA for Petitioner No. 1-13

MR PM THAKKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 11/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr.K.V.Gadhia on behalf of

the petitioner and learned advocate Mrs.Sangeeta Pahwa for the respondent.

In the present petition, the petitioners had challenged the orders of termination passed by the respondent before the Labour Court, Surat under the provisions of the Bombay Industrial Relation Act, 1946 by filing T.Applicatoin No.146 to 158 / 1986. The labour court, Surat has passed the order on 18th November, 1989 and directed the respondents to reinstate the petitioners in service with full backwages of the interim period. The said order of the labour court was challenged by the respondent before the Industrial Court being Appeal No.IC-18 / 1989. In turn, the appellate Court has set aside the order passed by the labour court, Surat by order dated 6th July, 1993 allowing the appeal filed by the respondent.

Learned advocate Mr.K.V.Gadhia for the petitioners has submitted that the Industrial Court has committed the gross error in reversing the judgment given by the labour court. He also submitted that the whole finding given by the Industria Cout is contrary to the record and finding is baseless and perverse. Therefore, Industrial Court has committed the gross error in allowing the appeal filed by the respondent.

Learned advocate Mrs.Sangeeta Pahwa for the respondent has submitted that the Industrial Court has rightly appreciated the facts which were on record being appellate authority and for that, the Industrial Court is competent to reappreciate the evidence being the appellate authority. She also submitted that the evidence which was led before the labour court, was not rightly appreciated by the labour court, which was rightly reappreciated by the Industrial Court and ultimately the industrial court has come to a right conclusion that from the date of termination, all the workmen were employed elsewhere and inspite of three requests letters written by the respondent to the petitioners, none of the workmen had reported for work with the respondent. Therefore, according to her submissions, finding given by the Industrial Court is perfect, legal and valid and as such, no error is committed by the Industrial Court while allowing the Appeal preferred by the respondent. She also submitted that this Court has very limited jurisdiction under Article 227 of the Constitution of India and this Court cannot reappreciate the fact finding given by the Industrial Court and therefore, according to her submissions, there is no substance in the present

petition and the same deserves to be rejected. She also further submitted that according to the affidavit-inreply filed by the respondent, the Unit in which the petitioners were working, means, Harinagar Unit has been closed and other workers who are working at Harinagar Unit, they were retrenched by the respondent. Therefore, there is no scope to reinstate the petitioners in reinduct them in Harinagar Unit by the respondents and more so, now ten years have passed and therefore also, it is not possible for the respondent to reinstate the petitioners in service in light of the earlier offer made by the respondent.

However, against the said submissions of the learned advocate Mrs.Pahwa, learned advocate Mr.Gadhia submits that affidavit-in-rejoinder is filed by the petitioners and averments made therein that the respondent is not correct and in fact, said Harinagar Unit is in existence and not closed.

I have considered submissions made by the respective learned advocates for the parties and also perused the awards and order passed by the Labour Court and Industrial Court respectively. This Court has also gone through the affidavit-in-reply and the counter Rejoinder filed by the respective parties. The Industrial Court has discussed the whole issue after considering the oral evidence led before the Labour Court by the respective parties. The case of the petitioners was that there was some misbehaviour with the employer and that is how it resulted into termination on 30th January, 1986 and therefore, immediately on 3rd February, 1986, notice was served on the respondent. The Industrial Court has also considered that from the date of termination, immediately, approach notice was given to the respondent but in response to that approach notice, three notices were received by the petitioners from the respondent wherein an offer was made by the respondent to resume the duties immediately but they had not resumed duty in response to these three letters. The reason given by the petitioners that if they had resumed the duty, then some harsh action would have been taken by the petitioners against the respondent because of the threat given by the employer and therefore, they had not reported for the duty. On behalf of the respondent, at Exh.14 one Shubhkaran Pannalal was examined and he was cross examined by the petitioners and he made clear statement in his evidence that the respondent was very well prepared to reinstate all the petitioners unconditionally without backwages of the interim period. On behalf of the respondent, one Accountant Shri

Murlidhar Mutoomal Jaysingne was examined at Exh.20 and thereafter, the Industrial Court has examined the merits of the matter. The Industrial Court has appreciated the defence of the petitioners in light of the three notices served on the petitioners by the respondent that threat which was mentioned being the defence from the petitioners, the Industrial Court has come to the conclusion that if the defence of the threat by the employer was right or correct, then why the workmen has not given anything in writing or mentioned the same in reply and they would have given an answer to the employer that because of the threat, they are not able to resume the duties, otherwise, they are prepared to resume the duties. But as such, there is no reply by the workmen against said three notices served by the respondent to the workmen. The Industrial Court has also appreciated the fact that after 30th January, 1986 immediately the workmen were employed elsewhere which found from the cross examination of the workmen at Exh.9. So far the defence of the workmen that because of the threat and direction given by the respondent from the other employer that they would be terminated and therefore, the Industrial Court has come to the conclusion that from the date of termination i.e. 30th January, 1986 immediately, all the workmen were employed in other establishment. Ultimately, the Industrial Court has reappreciated the whole evidence and come to the conclusion that looking to the conduct of the workmen, they voluntarily left services because of some dispute with the employer on 30th January, 1986 and inspite of three letters served by the respondent on the petitioners, none of the petitioners had reported for work and ultimately the Industrial Court has come to the conclusion that the labour court has committed gross error not appreciating the evidence of both the parties properly and therefore, appeal came to be allowed by the Industrial Court while setting aside the order passed by the labour Court.

Therefore, considering the entire order passed by the Industrial Court as well as the the Labour Court, according to my opinion, while passing the orders impugned in this petition, the Industrial Court has not committed any error and on the contrary, the Industrial Court has given detailed reasoning in support of the conclusion. It is very much clear that the entire evidence has been rightly reappreciated by the Industrial Court and even otherwise, this Court has limited jurisdiction while exercising the powers under Article 227 of the Constitution and this Court cannot reappreciate the fact finding which has been arrived at by the Industrial Court in reappreciation of the whole

evidence.

In view of above discussion, there is no substance in the present petition and it does not succeed. Accordingly, the present petition is dismissed accordingly.

Rule is discharged with no order as to costs.

Date : 11.9.2003 [H.K.Rathod, J.]

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